IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/03/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL APPEAL NO.949 OF 2001

1. Babu
2. Maruthachalam
3. Thangavel
4. Sakthivel
5. Shanmugam
6. Viswanaathan ... Appellants

-Vs-

State rep. by the Inspector
of Police, Annur Police Station,
Tiruppur (Crime No.437 of 1994) ... Respondent

Appeal against the judgment of conviction and sentence dated 10.09.2001 made in S.C.No.144 of 1995, on the file of the Court of Assistant Sessions Judge, Tiruppur.

!For Appellants : Mr.Prabakaran for A1,A4,and A5.
Mr.V.K.Muthusamy
Senior Counsel
for Mr.M.M.Sundaresh
for A2 ,A3 and A.6

^For Respondent : Mr.A.N.Thambidurai (Govt.Advocate)

:JUDGMENT
This appeal is directed against the Judgment dated 10.09.2001 rendered in S.C.No.144 of 1995 by the Court of Assistant Sessions Judge, Tiruppur, thereby convicting the appellants, who are accused Nos.1 to 6 before the trial Court, for the commission of offence under Section 376 IPC and sentencing each of them to undergo RI for 10 years further acquitting them for the offences punishable under Sections 323 and 323 r/w 149 and 34 IPC.

2. The charge against the appellants, who were accused before the Court of Assistant Sessions Judge, Tiruppur, is that the accused Nos.1 to 6 joining hands with each other on 20.11.1994 at about 10.00 p.m, while accused Nos.2,3,4 and 6 committed rape on the victim Selvi against her will when the other accused No.1 and 5 accompanied and helped them with a common intention of committing rape on the victim Selvi; that the first accused also

assaulted one Palanisamy, the brother of the victim, by slapping on his cheek and at that time, the other accused were also present and hence the charge against all of them under Sections 376, 323, 323 r/w 149 and 34 IPC.

3. The case of the prosecution is that on 20.11.1994, at about 10.0 0 p.m at Kempanaikenpalayam, when the victim Selvi along with her brother Palanisamy were returning home in a bicycle after watching a movie, when the said Selvi was the pillion rider, the accused 1 to 6 joining hands with each other and with intent to voluntarily and against her Will to have sexual intercourse with her, chased the bicycle in which the victim Selvi was travelling as a pillion rider and dashed against the same making her and the rider of the cycle Palanisamy fell to the ground; that when the said Palanisamy questioned such of the acts of the accused, the first accused slapped him on his cheek causing injuries and all the six accused taking the said Selvi away from the said Palanisamy and reaching at a damaged Wall, the accused Nos.2 to 4 and 6 raped the victim Selvi against her Will one by one and the other accused Nos.1 and 5 also were in the company of those who committed the offence sharing the common intention to rape. Therefore, all the accused Nos.1 to 6 were charged for the offence punishable under Section 376 IPC and since at the same time, place and in the course of the transaction, the first accused, in the presence of the other accused Nos.2 to 6, assaulted the witness Palanisamy by slapping on his cheek and caused injury, the accused have become further punishable for the offences punishable under Sections 323, 323 r/w 149 and 34 IPC.

4. The prosecution, which is burdened with the proof of the above charge with such standard of proof beyond all reasonable doubts, during trial by the trial Court, has examined 10 witnesses as P.Ws. 1 to 1 0 for oral evidence, besides marking 14 documents as Exs.P.1 to P.14 for documentary evidence and three material objects as M.Os.1 to 3. The evidence placed on record on the part of the accused, in all, is nil.

5. The trial Court, having recorded the said evidence and framing the proper point for consideration and having its own discussions on the facts and circumstances of the case and appreciating the evidence placed on record by the prosecution and dissected by the defence has ultimately arrived at the conclusion to hold all the accused Nos.1 to 6 guilty of the offence of rape and punishable under Section 376 IPC and not guilty under the other Sections 323 and 323 r/w 149 and 34 IPC and sentenced each of the accused to undergo RI for 10 years for the offence alleged. It is this conviction and sentence passed in its Judgment dated 10.09.2001 by the Court of Assistant Sessions Judge, Tiruppur, which has been challenged by the accused in the above Criminal Appeal on certain grounds as pleaded in the grounds of appeal.

6. Looking at the case of the prosecution in evidence what comes to be known is that P.W.1 who at the relevant point of time was working as a Medical Officer at Mettuppalayam Government Hospital, in his evidence, has deposed that on 22.11.1994, one Palanisamy of Annur was brought by the Annur Police, when he told the Police that some unknown persons assaulted him and there was a contusion to the extent of 1 x 2 cms on the right and left

cheeks and that the witness effected the entries into Ex.P.1, accident register.

7. P.W.2 is yet another Doctor at the General Hospital, Tiruppur and he would depose that on 22.11.1994 at about 7.20 p.m at the instance of the Magistrate, Avinashi, the victim was brought to the Hospital and she complained that she was raped by some persons at 10.00 p.m on 20.11.1994; that there were no external injuries on her body; that she would have been aged 20 to 23 as per the opinion of the radiologist and since there were no external or internal injuries on her body and on her private part, he collected the vaginal smear and pubic hair and preserved them for chemical examination; that the accident register entered and given by him would be marked as Ex.P.2. He would also depose that he later examined four accused namely Shanmugam(A5), Viswanathan(A6), Babu(A1) and Thangavel(A3) on 02.12.1994 from 4.30 to 5.30 p.m and would offer opinion to the effect that they were capable of having sexual intercourse; that he had admitted the third accused as an inpatient and would offer his opinion as to what he observed in his genital organ opining that he was capable of having sexual intercourse and had wounds and was not able to peel his skin backward.

8. P.W.3 is the Radiologist who, examining the victim Selvi on 23.11.1994 radiologically, would determine her age as in between 20 and 23 and he would depose that he has also taken the X-ray bearing No.69 6, and this witness has issued Ex.P.7 age certificate. P.W.4 would examine the second accused regarding his capability to have sexual intercourse and would issue Ex.P.8 certificate marking all his finding ultimately opining that he is capable of indulging in sexual intercourse. P.W.5 is yet another Medical Officer attached to the Government Hospital, Tiruppur who examined the fourth accused regarding his capability to indulge in sexual intercourse and would issue Ex.P.9 to the effect that there was nothing to suggest that the above person would not have performed the sexual intercourse.

9. P.W.6, the victim, would depose that before 1 + years when herself and her younger brother were returning from the Cinema Theatre, three persons followed them by cycle and they dashed against the cycle in which she was travelling resulting in herself and her brother falling down; that when her brother questioned their act, they slapped him on his cheek and her brother ran off from the scene out of fear; that those three persons followed by three others, all the six persons joining hands with each other, took her near a damaged wall and raped her; that the third accused first raped her followed by the first and the second accused and she became fainted; that her brother brought the villagers and the accused ran off; that she gave Ex.P.10 complaint which got reduced into writing by the Head Constable and that she affixed her left thumb impression. This witness would further depose that she was referred to the hospital for Medical Examination and the Police recovered M.Os. 1 to 3; that the police examined the witness and recorded their statements; that about 9.10 a.m next day, the accused were brought to the Police Station; that three persons slapped her younger brother on his right cheek and he was referred to the Mettupalayam Hospital and she was referred to the Tiruppur Hospital. Even in the cross-examination, she would maintain what she deposed in her Chief examination.

10. P.W.7 is the younger brother of P.W.6 and he would depose in the same manner as P.W.6 deposed regarding the returning from the Cinema Theatre by cycle and three persons who came following them in their bicycles, dashed against his bicycle and pushed them on the ground; that when he questioned such an act, he was slapped thrice and three more persons came running and fearing danger, he left the scene; that he went to the village and brought men and they saw his sister lying naked and fainted and that she was taken back home; that on Monday at about 7.00 a.m, they went to the Annur Police Station and lodged the complaint; that the Police examined them and sent him to the Mettupalayam Government Hospital and his sister was sent to the Tiruppur Government Hospital. Even this witness in his cross-examination would confirm what he deposed in the Chief Examination.

11. P.W.8 would depose that 1+ years back, on a Sunday, the occurrence took place; that P.W.7 informed him of as to what had happened and he went along with him at about 12.00 mid night to the scene of occurrence where only the lady was lying fainted; that they sprinkled water on her face and took her to the house; that the next day when he was going for his job, he saw the photographs being taken at the spot; that he attested the observation mahazar which would be marked as Ex.P.2.

12. P.W.9 was the Sub Inspector of Police of Annur Police Station and he would depose that on 21.11.1994, at 7.00 p.m, P.W.6 came to the Police Station and gave the complaint; that he recorded the same and reading out the contents to the complainant, got her thumb impression and registered the case in the Station Crime No.437 of 1994 under Sections 323 and 376 IPC; that in the presence of P.Ws.6 and 7, he prepared Form-95 and recovered the Material Objects - sari, inskirt and jacket of the victim - and at 6.00p.m on 22.11.1994, he inspected the spot in the presence of witnesses and prepared the Observation Mahazar and Ex.P.13 rough sketch and thereafter he examined some more witnesses and recorded their statements; that he sent the victim for Medical Examination and gave requisition to the Court for sending the M.Os to the forensic laboratory; that on 25.11.1994 at about 6.00 p.m., in the presence of the witnesses, he caused the arrest of the first accused and recorded his confession statement attested by the witnesses and on the information furnished by him, he caused the arrest of rest of the accused and recorded their confession statements and thereafter he sent the accused for judicial custody along with requisition for they being medically examined. He would further depose that the Inspector of Police has taken up the matter for further investigation and Ex.P.14, First Information report would be marked by this witness. Even this witness would withstand the cross examination of the defence.

13. P.W.10 was the Inspector of Police, Annur police station at the time of occurrence and this witness would depose that on 10.08.1995, he took the case for investigation and examined the Government Doctors Jayapal, Baskaran, Kennedy, Gurusamy and Gopikrishna and recorded their statements on 29.05.1995 and on completion of the investigation, he filed the chargesheet against all the accused for the offences punishable under Sections 376, 323

read with 149 and 34 IPC. No effective cross examination would be held with this witness.

14. During arguments, the learned senior counsel appearing on behalf of the appellants/accused Nos.2, 3 and 6 besides filing the written arguments, would also advance his oral arguments tracing the facts and events as it has been narrated by the prosecution that on the date of occurrence, that was on 20.11.1994, when P.W.6 the victim accompanied by her younger brother P.W.7, was returning from the Cinema theatre in a bicycle, three of the accused came from behind in their bicycle and dashed against them and made them fall from the bicycle and three more accused followed them and A.1 asked her to come along with him to have a jolly time and when she refused, all the six accused took her to the old house nearby and raped her one by one and as directed by A.1, A.3 went first followed by A.2, A.4 and A.6. At this juncture, the learned senior counsel would point out that it is the evidence of P.W.6, the victim herself that she had conscious till three persons raped her and then she fell unconscious and she did not know what happened thereafter; that the next day on 21.11.1994, at 7.20 p.m, it is alleged that P.W.6 in the company o f P.W.7 and other villagers gave Ex.P.10 oral complaint recorded by P.W.9, Sub Inspector of Police; that M.Os.1 to 3 are also said to have been recovered and only on 22.11.1994, she was referred to the Doctor with the Policemen and P.W.2 would examine her at 7.00 p.m that day and the lady Doctor who examined her did not find any injury external or internal around her private part; that no opinion has been given either by P.W.2 or by anyone pointing that the rape was committed.

15. The learned senior counsel continuing to argue would further find that A.1, A.5 and A.6 are alleged to have been arrested on 25.11.1994, A.2 on 02.02.1995, A.3 on 29.11.1994 and A.4 surrendered before the Magistrate and they have been medically examined by P.W.2 to ascertain the age and potency and the Doctor would find uniformly that all the accused are capable of having sexual intercourse and there was nothing to suggest that they could not have performed sexual intercourse. However, the learned senior counsel would point out that A.1 was not capable of having the sexual intercourse and the medical evidence adduced in this regard by the prosecution is not correct since on a thorough check-up, it comes to be noted that it was only a typographical error and the Doctor has uniformly certified for all the accused 1 to 6 offering opinion that there was nothing to suggest that they could not have sexual intercourse. The learned senior counsel would, at this juncture, cite a judgment of the Madhya Pradesh High Court delivered in Betu alias Kamaal Khan v. State of Madhya Pradesh reported in 1994 (Crl.L.J) NOC 200, wherein it has been held that within the meaning of Section 114-A of the Evidence Act, it must be clearly proved that the accused did have the sexual intercourse.

16. The learned senior counsel would also cite a judgment of the Honourable Apex Court delivered in State of Karnataka, vs.Suresh babu Puk Raj Porral reported in AIR 1994 SC 966, wherein the statement of victim before Police as well as during cross-examination was that accused did something to her which he ought not to have done but she could not exactly elicit as to what exactly the accused did and in the absence of any other evidence to

corroborate her testimony, the Honourable Apex Court held that it cannot be inferred that accused had intercourse with her.

17. Pointing out that no identification parade was held to identify the accused, the learned counsel for the appellants would cite yet another judgment of the Honourable Apex Court delivered in State of Himachal Pradesh vs. Lekh Raj and Another reported in (2000)1 SCC 247, wherein it has been held:

"Where the accused was neither a person already known to the prosecutrix nor was specifically named in the FIR nor was subjected to test identification, putting him on trial for offence under Sections 376(2)(g) and 323 is improper and identification of the accused for the first time at the trial is a weak evidence.
Test identification is not a substantive evidence, but holding of the test identification is a safe rule of prudence and can be used for corroboration purposes.
In absence of any ulterior motive for falsely implicating the accused, the testimony of the victim of rape corroborated by the medical evidence is reliable."

18. The learned counsel for the appellants then pointing out regarding the presence of A.1 and A.5 at the place of occurrence that there was no evidence that these two accused committed rape of the victim, would cite the following judgments:

(i)AIR 1980 SC 1252 (Krishnan v. State of Haryana)
(ii)1993 Crl L.J 120 (Shatrughan and another v. State of Madhya Pradesh)
(iii)1994 Crl.L.J 2490 (Sundaram alias Balasundaram v. State)
(iv)1994 SCC (Cri) 503 (Ram Nivas v. State of Karnataka
(v)1996(1) L.W (Crl) 165 (Amirthalingam v. State)

19. In the first judgment cited above, it has been held by the Honourable Apex Court:

"The injury on the person of the victim, especially her private parts, has corroborative value. Her complaint to her parents and the presence of blood on her clothes are also testimony which warrants credence. To forsake these vital consideration and go by obsolescent demands for substantial corroboration is to sacrifice commonsense in favour of an artificial concoction called 'Judicial' probability."

20. In the second judgment cited above, it has been held by a learned single Judge of the Madhya Pradesh High Court that the factum of intercourse since being doubtful, presumption under Section 114-A of the Evidence Act is not attracted and the accused is acquitted.

21. In the third judgment cited above, a learned single Judge of this Court has held thus:

"Medical evidence not supporting the case of rape and the relative of

prosecutrix who entered house at relevant time and saw accused going out and prosecutrix weeping inside, is not supporting the case of rape; that the complaint written by prosecutrix herself immediately after the incident with details and particulars is suggesting that complaint was prepared leisurely after full deliberation and since there is possibility of false implication, the accused is entitled to acquittal."

22. In the fourth judgment cited on behalf of the appellants since no injuries were found either on prosecutrix or on accused suggesting forcible intercourse and the Prosecutrix being a grownup married woman the Doctor was also unable to give any opinion whether rape had been committed or not and in such circumstances, the Honourable Apex Court having found the evidence of prosecutrix highly untrustworthy has held that the accused is entitled to benefit of doubt.

23. In the last judgment cited on the part of the appellants, a learned single Judge of this Court has held:

"Offence was only in the stage of preparation and hence did not attract Section 376 but would fall under Section 354. Conviction and sentence modified."

24. Citing the extracts from the above judgments, the learned senior counsel would further continue to argue that the charge framed is defective and the conviction under Section 376 IPC for a gang rape is erroneous particularly in view of the fact that the identity of each and every accused has not been established beyond doubts.

25. The learned senior counsel would further state that it is the case of the prosecution that accused Nos.2,3,4 and 6 indulged in the offence of rape directly and the remaining accused Nos.1 and 5 indirectly became responsible for the offence. The learned senior counsel would point out that the victim has used the term that `she was spoiled by the accused Nos.2,3 and 4 and thereafter she did not know what happened since she became fainted' and repeatedly she has used only the term that she has been spoiled and that is not sufficient for perpetration of rape and intercourse should have been spoken to prove Section 114-A of the Evidence Act which insists on the necessity to prove the intercourse; that the Tamil word "vd;id bfLj;jhh;fs;" is a general term capable of giving several meanings and does not lead to the act of intercourse only and the prosecution has failed to give the true meaning of the term thereby proving the ingredients of Section 375 IPC, the actual intercourse from the evidence of P.W.6; that P.W.6 victim did not even tell her brother P.W.7 or even P.W.8 or any other villager that she was raped by any person immediately after the occurrence; that even in her complaint, Ex.P.10, given to P.W.9, Sub Inspector of Police, she did not say that she was raped as defined under Section 375 IPC.

26. Hence, there is total lack of evidence and material ingredients regarding the act of intercourse amounting to rape. From the

evidence of P.W.2, the lady Doctor's report, they did not give any opinion that any rape was committed by anybody on her; that the vagina swab was taken out and sent for chemical examination, but no findings were received as Exhibit in this regard; that the non-examination of the lady Doctor is fatal to the case of the prosecution; that the Medical Officers P.W.2 to 5 speak about the non-availability of any injury on the private part of the victim and therefore the offence of rape was individually or collectively established otherwise than the direct evidence of P.W.8 which is deficient. On such argument, the learned senior counsel would ultimately end up stating that neither a valid case is put up nor has it been proved beyond all reasonable doubts against each and everyone of the accused Nos.1 to 6 and vital evidence is lacking for convicting the accused for such a heinous crime and prayed to set aside the conviction and sentence ordered by the trial Court allowing the above appeal in full.

27. The learned counsel appearing on behalf of the accused Nos.1, 4 and 5 would adopt the arguments of the learned senior counsel regarding those arguments advanced covering up these appellants also and would pray for the same relief as it had been prayed for on behalf of the other appellants.

28. On the other hand, the learned Government Advocate appearing on behalf of the respondent State, having given a picture of the accused, the Sections with which they have been chargesheeted and the finding of the learned trial Judge, would say that P.W.6, the victim was working along with A.1 Babu in the masonry work and with that acquaintance and taking advantage of the fact that the victim was not living with her husband, all the accused had followed her on 20.11.1994 who, since there was no work, went along with her brother P.W.7 to watch a movie and around 10.30 p.m, while she was returning in the bicycle as a pillion rider when P.W.7 was riding the cycle, the first appellant and two others have come by another cycle and dashed against the cycle of the victim resulting in P.W.6 and P.W.7 falling on the ground with the cycle and beating P.W.7 and chasing him away, all the six accused took the victim to the nearby old house and perpetrated the offence of gang rape on the victim and P.Ws.1 to 5 are Doctors attached to the Government Hospital, Tiruppur among whom, P.W.1 would examine P.W.7 regarding the injury sustained by him, P.W.2 who attended on the victim initially would put entries in the accident register and the same P.W.2 would also examine A.3, A.5 and A.6 and would issue Exs.P3 to P.6 accident registers; P.W.3 Doctor would ascertain the age of the victim taking the X-ray of P.W.6 which is Ex.P.7; that P.Ws.4 and 5 respectively would examine A.2 and A.4 and issued Exs.P.8 P.9 ; that P.W.9 is the Sub Inspector of Police who registered the First Information Report under Ex.P.14 and took up preliminary investigation and inspected the spot and prepared Ex.P.13 sketch, caused the arrest of A.1, A.2, A.3, A.5 and A.6 and would put entries regarding the surrender of A.4 with the Magistrate and would entrust the investigation with P.W.10 the Inspector of Police for investigation who examined the rest of the witnesses, collected the materials and on completion of the investigation, laid the chargesheet against all the accused.

29. The learned Government Advocate would also cite the

following Judgments in support of the case of the prosecution/respondent herein:
(i) 1990 SCC 249 (State of Hariyana vs. Prem Chand and others)
(ii) 1997 (2) Crimes 257 (State of Maharashtra vs. Suresh Nivruthi Bhusave and others)
(iii) AIR 1990 Supreme Court 658 (State of Maharashtra vs. Chandra Prakash kewelchand Jain)

30. So far as the first Judgment cited above is concerned, the Honourable Apex Court has held that " the word 'conduct' of the prosecutrix used in the judgment under review was in lexicographical sense and not in the context of her character.

31. In the second Judgment cited above, the Division Bench of the Bombay High Court has held in a case of prosecutrix a married woman, raped by three respondents inside the shop of R.1 that `Corroboration to statement of prosecutrix is not a rule of law. Statement of prosecutrix found implicitly reliable and in the absence of any iota of enmity she would not have falsely named accused in F.I.R. So, therefore, the issue of delay in the lodging of the FIR cannot be approached with the same sensitiveness in a case of rape as in other cases; say a case of murder or a case of attempt to murder. No injury on person of prosecutrix or accused were because of delay in their examination by Doctor and therefore the respondents are liable to be convicted.'

32. In the third Judgment cited above, the Honourable Supreme Court has held that `the First Information Report was lodged within two days of prosecutrix after coming out of her in-law's house - Statement of prosecutrix corroborated by evidence of her sister, mother and father as well by First Information Report - Absence of injury on person of prosecutrix did not make her statement false - Conviction and sentence did not call for interference except sentence of fine which was set aside'.

33. Giving the sequence of events in the case, the learned Government Advocate would submit that appreciating the evidence made available in the manner required by law, the trial Court has convicted and sentenced all the accused who are the appellants 1 to 6 for the offence of rape under Section 376 IPC and sentencing them to undergo RI for 10 years and to pay a fine of Rs.500/-, in default to undergo a further RI for three months.

34. The learned Government Advocate would further submit that the appellants 1 to 6 have preferred this appeal raising the contention whether the victim P.W.6 was subjected to sexual assault by all the accused and would submit that P.W.6 at the time of giving complaint in Ex.P.10 to P.W.9, has clearly mentioned that prior to the occurrence, while she was going for employment, she had occasion to see the appellants at the bus stop and therefore, she knew their identity to the effect and that she was subjected to the sexual assault by all the above appellants and further she has deposed that at the instigation of A.1, she was raped by A.2,A.3 and A.4 and thereafter by A.1, A.5 and A.6; that the submission made by the appellants counsel that the victim did not mention regarding the rape perpetrated on her

is totally false since P.W.6 stated that appellants 1 to 6 took her to the dilapidated house and stripping off her clothes, raped her and for the rape she has employed the term "vd;id bfLj;Jtpl;lhh;fs;"; that it has been repeated by P.W.6 in her deposition also and hence no prejudice has been caused in framing the charge under Section 376 IPC instead of Section 376(2)(g) as it has been loitered much on the part of the appellants; that at the time of giving the complaint and before the Medical Officers, the victim had very clearly mentioned that due to the pain all over the body, she was not able to lodge the complaint in time and it has been noted by P.W.2 also that she was suffering from pain all over the body as per Ex.P.2.

35. On such arguments, the learned Government Advocate would end up his arguments with a note that the prosecution has proved the case factually and by legal evidence and the trial Court based on the evidence adduced, convicted all the accused/appellants under Section 376 of the IPC and sentenced them to undergo RI for 10 years and to pay a fine of Rs.500/- each, in default to undergo a further RI for 3 months each and would pray to confirm the said Judgment passed by the Court of Assistant Sessions Judge, Tiruppur.

36. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what is given to understand by this Court is that evidence is amply made available through P.W.6/the victim that she already knew all the six accused and that in the bus stop, she had occasion to see them while going for her employment and therefore she knew their identity as a result of which even in the FIR, she was able to give the names of accused No.1 to 4, even though she was not able to name the accused Nos.5 and 6. The victim was also able to identify all the remaining accused before the police and also before the trial Court.

37. The evidence of P.W.6 would further make it clear that the occurrence took place near a damaged wall in the open space and in the light of the moon, she was well able to see the faces of the accused. She would also account for the manner in which the actual occurrence of rape took place and therefore there was absolutely no necessity on the part of the prosecution to conduct an identification parade since the victim was able to give the full identification of the accused.

38. P.W.7/the younger brother of the victim would also narrate the events just prior to the actual occurrence of rape and since he was beaten up and chased away, he was not able to be an eye-witness to the occurrence. But, this witness would run to their place and bring the public to the spot when he was able to see the victim lying naked and in a fainted state and sprinkling water on her face, they took her back home and that evening by 7.00 p.m., they gave the complaint in the police station.

39. P.Ws.1 to 5 are the medical witnesses, who have spoken to the effect of having examined not only the victim but also the accused marking the relevant documents as exhibits. The medical witnesses who examined the victim would not see any external or internal damage. But, this aspect has to be carefully looked into in the context of the evidence of P.W.1 that at the

time of rape, three persons held her hands and legs and clothes were inserted into her mouth thus restricting her from moving or from raising alarm and therefore there was no possibility for her to make attempts to escape or struggle against the accused and therefore there is no possibility for injuries to occur to her and she being a married woman, the other symptoms of rape could not also be there in the private part.

40. But, the oral evidence of P.W.1 coupled with Ex.P.10 her complaint and the FIR Ex.P.14 prepared based on her complaint are cogent and convincing to the effect that she has been raped by the accused joining as gang with intent to commit rape on her. Besides her evidence that she had been left fainted and without any clothes on her person and with the same position, she was located after the occurrence was over at the spot by P.W.7 and therefore no other evidence need be necessary for the accused having perpetrated the gang rape on her. Moreover, P.W.6 has seen all the six accused at the time of rape whom she would identify clearly in the Court and she was conscious till three accused raped her and the other three either helping them to perpetrate the offence by catching hold of her hands and legs and inserting clothes into her mouth and because she fainted thereafter, it could possibly be concluded that the other accused have also had the intercourse with her excepting for which they had no business to be at the place of gang rape and they have also assisted in all means for such heinous crime to have been committed by one another.

41. P.W.6 would very clearly depose to the effect that everyone fell on her body making her fall to the ground in the lying position and perpetrated the offence of rape and therefore no discussion need be necessary on the interpretation of the terms used by P.W.1 that they spoiled her one by one so as to take a different meaning than the rape committed by them on her since no other meaning could be inferred for having spoiled lying on the body and therefore it is safe to conclude that the terms employed by P.W.6 are only pointing to the rape and nothing else.

42. It is not the case of the defence that either due to previous enmity or for any gain, P.W.6 has preferred the complaint against the accused and not even a suggestion has been put to her to that extent by any of these accused and therefore there is absolutely no necessity to doubt the genuineness of the evidence adduced on the part of P.W.1 supported by the evidence of P.W.7 and the available medical evidence. There is absolutely nothing to suggest for a false complaint to have been lodged on the part of P.W.6/ the victim since there was no reason on her part to do so much less against all the accused. The other oral evidence adduced on the part of the police officials and the investigation done on their part have also been by and large adhering to the requirements of law. Further more, in such a heinous crime of gang rape, no woman would ordinarily come forward to expose herself to have been raped without an occurrence of that sort without any truth attached to the same at the cost of her modesty and reputation in the society.

43. So far as the judgments cited on the part of the appellants are concerned, in the first judgment reported in 1994 Crl.L.J. NOC

201 (MP) (supra), since there had been no clear proof that the accused had sexual intercourse with the victim, the said Court has decided the case differently.
44. In the second judgment reported in AIR 1994 SC 966 (supra), the victim admits that prior to the occurrence, she was a consenting party to have intercourse with the accused and in the absence of some other evidence to support her case, the Honourable Apex Court has arrived at the conclusion that the offence of rape has not been made out.
45. In the third judgment cited from (2000) 1 SCC 247 (supra), it is regarding the identification and it has been clearly pointed out that identification is necessary only for a person unknown to the prosecutrix and not otherwise.

46. The next judgment reported in AIR 1980 SC 1252 was a case of artificial concoction without any commonsense being applied for vital considerations.

47. In the judgment reported in 1993 Crl.L.J.120, the very intercourse since being doubtful, the presumption under Section 114-A of the Evidence Act was held not attracted and hence the accused was acquitted.

48. In the judgment reported in 1994 Crl.L.J.2490 there was nothing to suggest the case of rape and there was possibility of false implication. In the other judgment reported in 1994 SCC (cri) 503, the evidence of prosecutrix was found highly untrustworthy and in such circumstances, the accused became entitled to the benefit of doubt.
49. In the last judgment cited on the part of the appellants reported in 1996-1-L.W. (Crl) 165, the offence was only at the stage of preparation and hence held did not attract Section 376 IPC but would fall under Section 354 IPC.

50. All these judgments in no manner are applicable to the facts of the case in hand and therefore these judgments do not in any manner help this Court in applying the norms held therein to the facts and circumstances of the case in hand.

51. On the contrary, in the judgments cited on the part of the prosecution reported in 1990 SCC 249 (supra), the Honourable Apex Court has held that `the word `conduct' of the prosecutrix used in the judgment under review was in lexicographical sense and not in the context of her character. In the second judgment cited on the partof the prosecution reported in 1997 (2) Crimes 257, the Bombay High Court has observed that `the statement of the prosecutrix found implicitly reliable and in the absence of any iota of enmity, she would not have falsely named the accused in the FIR and therefore the issue of delay in the lodging of the FIR cannot be approached with the same sensitiveness in a case of rape as in other cases and no injury on the person of prosecutrix or accused were because of delay in their examination by the Doctor and therefore the respondents are liable tobe convicted'. This judgment aptly applies to the facts of the case in hand

excepting for the fact that the accused in the case cited are numbering three and in the case in hand, they are numbering six and in no other manner, the facts are different from the case in hand.

52. In the other judgment cited on the part of the prosecution from AIR 1990 SC 658 also, it has been held that absence of injury on the person of prosecutrix did not make her statement false and the conviction and sentence did not call for interference except the sentence of fine, which was set aside.

53. Therefore, for all the above discussions held, there is absolutely no reason on the part of this Court to have a second thought or entertain hesitance in arriving at the only conclusion that all the appellants/accused No.1 to 6 with intent to commit rape on P.W.6/the victim, have not only gathered and abducted her from proceeding towards her residence with her brother in the bicycle but also deliberately making her and her brother fall down by dashing her cycle with their cycle and physically removing her to a secluded place and keeping her in the open, three of them holding her hands and legs and thrushing clothes into her mouth, committed the offence of rape on her one by one and the evidence adduced on the part of P.W.6 is cogent and convincing and reliable in its entirety coupled with the evidence of P.W.7 regarding the events just prior to the actual occurrence of rape and his evidence regarding witnessing the scene of her sister lying fainted naked at the place of occurrence, would be confirmed by the very evidence of P.W.6 herself thus proving the offence of rape perpetrated by all the appellants with convincing and reliable evidence for which the medical evidence such as entries effected in the accident register, the M.Os. found with stains and the accused having been tested for the proof of potency and the medical witnesses arriving at the conclusion that they were capable of having sexual intercourse etc. also lend supporting evidence to the prosecution case uniformly put up and even though there are some inconsistencies in not subjecting the clothes recovered from P.W.6/the victim to chemical examination, it is not, in any manner, cracking the unshakable evidence made available in support of the prosecution case, which has been put up in a simple and reliable manner.

54. In cases of such nature, where the accused perpetrate the felon in seclusion and during darkness without permitting anyone else to witness the occurrence, the genuineness and truthfulness of the evidence of the victim, the supporting evidence lent for those events which occurred immediately prior and after the occurrence as it is supplied by P.W.7 in the case in hand and the other relevant circumstantial evidence are sufficient to hold the accused guilty of the offence and it is absolutely not necessary to go into the minute details as it is required in other cases.

55. It should be noted that there is no effective crossexamination of any witness by the defence nor could it be said that the defence has gained any advantage in the cross-examination of the witnesses in

general, P.Ws.6 and 7 in particular, as a result of which the case put up by the prosecution comes to be proved without much difficulty.

56. A careful study made into the judgment of the trial Court would clearly prove that the trial Court has carefully traced the facts and circumstances of the case as projected by the prosecution without missing even the minute point and having ordered for the trial and conducting the same with full opportunity for both the prosecution and the defence to exhaust their remedies and recording the evidence - both oral and documentary - and having framed proper point for consideration, observing all the legal procedures to be adopted and appreciating the evidence in the manner required by law and giving reasons for accepting them at each and every stage, has ultimately arrived at the conclusion that the prosecution has proved its case beyond all reasonable doubts thereby convicting and sentencing all the accused, in the manner extracted supra.

57. In short, the prosecution has not only put up a uniform case but also has proved the same with proper and acceptable evidence in a reliable and overwhelming manner, thus without any lacuna or laxity or patent error of law to occur thus bringing home the guilt of the accused, which has been properly appreciated by the trial Court so as to arrive at the valid conclusion on such acceptable evidence to convict and sentence the accused and this Court does not find any valid reason existing to cause its interference into the well considered and merited judgment passed by the trial Court and hence the only conclusion that could be arrived at by this Court is to dismiss the above Criminal Appeal confirming the judgment of the trial Court.

In result,
(i) the above Criminal Appeal fails and the same is dismissed.
(ii)The judgment dated 10.9.2001 rendered in S.C.No.144 of 1995 by the Court of Assistant Sessions Judge, Tiruppur is hereby confirmed.

Index: Yes
Internet: Yes
ksr/Rao
To
1.The Assistant Sessions Judge,
Tiruppur.

2.The Inspector of Police,
Annur Police Station,
Tiruppur.

3.The Public Prosecutor,
High Court, Madras.